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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 16th May 2007

No.4831-1i/1-(BH)-65/1997/L.E.— In pursuance of section 17 of the Industrial Disputes Act,1947 (14 of 1947), the award dated the 13th March 2007 in I.D.Case No. 177/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Konark Paper & Industries Ltd., Jharia, District Mayurbhanj and its workmen S/Shri Parimal Das, Pravakar Sahu and Antaryami Behera was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT , BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 177 of 1998

Dated the 13th March 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of M/s. Konark
Paper & Industries Ltd.,
Jharia, Mayurbhanj. ... First-Party —Management
And
Their Workmen
S/Shri Parimal Das, Pravakar Sahu
and Antaryami Behera ... Second-Party — Workman

Appearances :

Shri S.T. Ullaha ... For First-Party —Management

Shri P. Das,
Shri P. Sahu,
Shri A. Behera ... For Second-Party—Workmen themselves.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Konark Paper & Industries Ltd., Jharia, Mayurbhanj and their workmen S/Shri Parimal Das, Pravakar Sahu and Antaryami Behera under Notification No. 5323/LE., dated the 18th May 1998 vide Memo No. 12586(6)/LE., dated the 10th November 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“Whether the action of the Management of M/s. Konark Paper and Industries Limited, Jharia, Dist- Mayurbhanj in dismissing Sarba shri Parimal Das, Attendant, Pulp Mill, Pravakar Sahu, 1st Assistant, Paper Machine and Antaryami Behera, Helper, De-inking Department of the Mill from service vide its orders dated the 14th July 1994 is legal and or justified ? If not, to what relief they are entitled ?”

3. Shorn of all unnecessary details, the case of the workmen as available from the statement of claim submitted by them is as follows:

The workman namely, Shri Parimal Das was working as an Attendant in the Pulp Mill Section of the Paper Mill of the Management whereas other two workmen namely, Pravakar Sahu and Antaryami Behera were working as Assistant, Paper Machine and as Helper in De-inking Sections respectively. During their service career all the three workmen were discharging their duties sincerely and honestly to the best of satisfaction of the authorities and because of their unblemished service career they were promoted to higher posts. The workmen were technically sound and expert in the job in which they were working respectively. The workmen of the Paper Mill formed a Trade Union to put forth their grievances before the Management and other authorities. The Management, however, wanted to divide the workmen and to suppress the Trade Union activities. On 15/17th March, 1993 the Management issued a charge-sheet against all the workmen alleging misconduct and further alleged that they had created disturbance in the Paper Mill and instigated the other workers to participate in the strike and also threatened the officers of the Management. After receiving the charge-sheet the workmen requested the Management for Oriya version of the charge-sheet and also to supply the relevant records in support of the charge. The management did not supply Oriya version of the charge-sheet and did not supply the relevant documents but appointed the Enquiring Officer to enquire into the charges. The workmen after receiving the notice from the Enquiring Officer to enquire into the charges. The workmen after receiving the notice from the Enquiring Officer participated in the enquiry and submitted application requesting for supply of Oriya version of the charge-sheet to enable them to submit their explanation but the Enquiring Officer without considering the genuine demand of the workmen proceeded with the enquiry and concluded the same with the connivance with the Management. Although the workmen made protest to the Management and gave application to change the Enquiring Officer, the Management did not change the Enquiring Officer. On the basis of the enquiry report submitted by the Enquiring Officer, the Management dismissed the workmen from their service on the 14th July 1994. Thereafter the workmen submitted appeal before the appellate authority stating all facts but the appellate authority i.e. the Managing Director of the Paper Mill rejected the prayer of the workmen and confirmed the order passed by the General Manager in dismissing them from their service. Thereafter the workmen took shelter of the concerned authorities of the Labour Department who started a conciliation proceeding which ultimately failed and hence the present reference to this Court.

4. Shorn of all unnecessary details, the case of the Management can be succinctly stated as follows:

The workman namely, Paravakar Sahu joined his service on the 18th August 1982 as Trainee Operator and the other two workmen joined their services as Masdoors on 1st December 1989 and subsequently on promotion Pravakar Sahu held the post of 1st Assistant, Paper Machine, Parimal Das held the post of Attendant, Pulp Mill and Antaryamai Behera held the post of Helper, De-inking Plant. At different times all the three workmen were found guilty of negligence in duty and had been warned on several occasions. The Paper Mill under the Management was declared a Public Utility Service by the Government of Orissa for a period of six months with effect from the 11th August 1992. In a tripartite settlement with the Trade Union on 19th December 1992 it was agreed that the workers would not resort to any illegal strike, go-slow in work and work stoppage of any kind and would not intimidate or abuse any Management personnel for a period of three years and any violation of the same would be treated as grave misconduct. The workmen of this case violating the terms of settlement committed gross acts of misconduct and incited other workers to go on a sudden strike on the 10th January 1993 in breach of Section 22 of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). All these workmen also misbehaved and abused the Development Manager of the Plant. For all these misconducts charges were drawn up separately against each of the three workmen. When the workmen refused to receive the charge-sheet in person, the same was sent by registered post with A.D. and was duly received by each of the workmen but inspite of that they did not offer any explanation but instead demanded Oriya version of the charges which was duly supplied by the General Manager of the Management. Thereafter the workmen demanded Oriya transcript of the Standing Order and of all the documents which was to be relied on by the Management during enquiry. In this way the workmen from time to time wanted to delay the starting of the enquiry. The Management appointed an Enquiring Officer and the fact was duly intimated to the workmen. The Management also supplied the list of 12 witnesses and 12 documents to the workmen which was duly received by them. Instead of filing explanation, the workmen wanted supply of copies of all reports in Oriya transcript and also Oriya transcript of entire Standing Order. It was made known to the workmen that the Standing Order was available in the Trade Union Office, besides a copy of the same was on the Notice Board. Relevant extracts of the Standing Order were supplied to the workmen. After service of due notice the Enquiring Officer held enquiry on 6th August 1993 and 7th August 1993 but all the three workmen put up a written grievance that they could not understand the contents of enquiry written in english and asked for adjournment. The enquiry was adjourned to the 6th September 1993 and 7th September 1993. The Enquiring Officer explained the workmen the procedure to be followed in conducting the enquiry and advise them individually to take assistance of any co-worker if so they desire. The Enquiring Officer could not come to hold the enquiry on the 6th September 1993 and therefore, the same was adjourned to the 9th September 1993 and 10th September 1993 under service a notice to the workmen by registered post with A.D. The workmen appeared during the enquiry on the 9th September 1993 and the 10th September 1993 but again refused to participate in the enquiry alleging that they had not received all the documents required by them and therefore, the Enquiring Officer adjourned the date of enquiry. The workmen refused to sign in the order-sheet regarding adjournment. The next date of enquiry was adjourned to the 11th October 1993 and 12th October 1993 under service of notice by registered post with A.D. to all the workmen. The workmen, Parimal Das and Antaryami Behera appeared in the enquiry on the 11th October 1993 and the other

workman Pravakar Sahoo appeared in the enquiry on the 12th October 1993 and they filed individual petitions admitting receipt of some documents in Oriya and again demanded Oriya transcript of all the documents. Till then the workmen had not filed any explanation to the charges. The General Manager of the Management supplied the Oriya transcript of all the documents vide letter Nos. 1331, 1332 and 1333, dated the 30th October 1993 and those letters were duly received by the workmen. Again under service of notice by registered post with A.D. the enquiry was fixed to the 15th November 1993. While the workmen, Pravakar Sahu and Antaryami Behera did not respond to the notice of enquiry, only Parimal Das in his letter dt. the 6th November 1993 admitted to have received those documents on the 3rd November 1993 and wanted time to submit his explanation. Therefore, the enquiry was again adjourned to the 30th November 1993 under service of notice by registered post with A.D. On 30th November 1993 all the three workmen were found absent but they came at 6.40 P.M. and filed a petition for adjournment stating that the President of their new Union was staying at Balasore. Here also again the Enquiring Officer adjourned the date to the 2nd December 1993 on which date the workmen appeared and filed a petition that they would be represented by Shri Jayant Das, the Working President of their Union. The Enquiring Officer adjourned the date of enquiry to the 3rd December 1993 but on the said date neither the workmen nor their representatives Shri Jayant Das turned up and therefore, the enquiry proceeded *ex parte*. After examining the witnesses and documents, the Enquiring Officer found the workmen guilty of all the charges. Each of the workmen were supplied with copy of the enquiry report and were called upon to show cause as to why they should not be dismissed from service. The workmen replied to the show cause notice which was devoid of substance worthy of consideration and therefore, all the three workmen were dismissed from service vide order dt. the 14th July 1994. Subsequent to the dismissal the workmen filed an appeal petition before the Managing Director who gave a personal hearing to the workmen and held that there was no material to exonerate the workmen from the charges and did not modify the term of punishment of dismissal. In its written statement the Management has contended that as because the workmen were found guilty of serious charges after due enquiry by the Enquiring Officer and after giving all opportunities to the workmen to defend themselves, the workmen are not entitled to the relief of reinstatement and back wages sought for by them.

5. On the aforesaid pleadings of the parties, the following issues have been framed.

ISSUES

(i) Whether the action of the Management of M/s. Konark Paper and Industries Limited, Jaria, Dist- Mayurbhanj in dismissing Sarbashri Parimal Das, Attendant, Pulp Mill, Pravakar Sahu, 1st Assistant, Paper Machine and Anaryami Behera, Helper, De-inking Department of the Mill from service vide its Orders, dt. the 14th July 1994 is legal and or justified ?

(ii) If not, to what relief they are entitled ?

6. In a case of this nature it is of paramount importance as to whether a proper enquiry had been held into the charges made against the workmen and as to whether sufficient opportunity had been given to the workmen to defend themselves. In his evidence M.W.1 has stated that after he was appointed as Enquiring Officer to enquire into the charges against the workmen, he sent notices to them but the workmen did not take part in the enquiry and did not appear for which he proceeded with the enquiry *ex parte*. Ext.4 has been proved by M.W.1 as deposition of witnesses and Ext.5 as the documents exhibited by the Management during the enquiry and Ext.6 as the

report of the enquiry. In his cross-examination M.W.1 could not say if the fact of his appointment as Enquiring Officer was intimated to the workmen. During cross-examination M.W.1 has further stated that no proof was shown to him that the charges had been translated in Oriya and had been given to the workmen. In his cross-examination M.W.1 has proved documents Exts. A series under which the workmen had applied that Shri Jayant Das, Executive President of the Union would represent them in the enquiry and has further stated that on the 2nd December 1993 he passed orders in the order-sheet permitting Jayant Das to appear and fixed the date of enquiry to the 3rd December 1993. From the evidence of M.W.1 it is clear that on the 2nd December 1993 all the workmen were present and they were intimated regarding the next date of adjournment to the 3rd December 1993 although the workmen did not sign in the order sheet. When the workmen were present during proceeding on the 21th December 1993 there was no need to issue any notice to them regarding the next date of enquiry on the 3rd December 1993. According to M.W.1 when on the 3rd December 1993 the workmen did not appear he went ahead with the enquiry *ex parte*. Thus it is very clear that sufficient opportunity had been given to the workmen to defend themselves but they did not avail the opportunity deliberately by remaining absent during the enquiry.

7. workman namely, Parimal Das has examined himself as W.W.1 and has stated that due to strike they were not able to attend their duties and the Management thought that they were supporting the strike, issued charge-sheet against them and that when the request was made to the Management to supply copies of the charge-sheet in Oriya only some portions of the charge-sheet were transcribed in Oriya. Although in his evidence, W.W.1 has stated that the enquiry made by the Enquiring Officer, M.W.1 was unfair and improper, there is no evidence to support such a contention. The Enquiring Officer after due enquiry found the workmen guilty of the charges vide enquiry report Ext.6

8. Thus having regard to the entire evidence on record and documents proved by both the parties, it is held that the dismissal of the workmen vide order, dt. the 14th July 1994 is legal and justified and therefore, the workmen are not entitled to any relief whatsoever.

The reference is thus answered accordingly.

Dictated and corrected by me.

Sd/- S.K. Mohapatra

13-3-2007

Presiding Officer,
Labour Court,
Bhubaneswar.

Sd/- S.K. Mohapatra

13-3-2007

Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY

Under-Secretary to Government